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7 DIOPTICS MEDICAL PRODUCTS, INC.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

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11 DIOPTICS MEDICAL PRODUCTS, INC.,  
11 a California corporation,

12 Plaintiff,

13 v.

14 BEI FRANCHISING, INC.,  
15 a Michigan corporation,

16 Defendant.

Case No. C-06-02643 (MMC)

**CONSENT MOTION TO ENLARGE  
TIME AND ORDER EXTENDING  
CERTAIN DUE DATES AND  
[PROPOSED] ORDER**

Date: December 1, 2006  
Time: 9:00 a.m.  
Courtroom: 7, 19th Floor  
Before: Honorable Maxine M. Chesney

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1                   **NOTICE OF MOTION AND MOTION**

2                   TO DEFENDANT BEI FRANCHISING AND ITS ATTORNEYS OF RECORD:

3                   PLEASE TAKE NOTICE that on December 1, 2006 at 9:00 a.m. or as soon thereafter as  
4 the matter may be heard in the above-entitled Court, located at 450 Golden Gate Avenue, San  
5 Francisco, California, 94102, plaintiff DIOPTICS MEDICAL PRODUCTS, INC. ("Dioptics"),  
6 will, and hereby does, move this Court for an order to extend the date for defendant BEI  
7 FRANCHISING, INC. ("BEI"), to answer Dioptics's complaint and the date for the parties to: (i)  
8 meet and confer regarding initial disclosures, early settlement, ADR process selection, and a  
9 discovery plan; (ii) file the ADR Certification Signed by Parties and Counsel; and, (iii) file either a  
10 Stipulation to the ADR Process or a Notice of Need for ADR Phone Conference. This consent  
11 motion will be based on the attached memorandum of points and authorities, the documents and  
12 records on file with the Court in this action, without oral argument, as defendant BEI consents to this  
13 motion.

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1           **MEMORANDUM OF POINTS AND AUTHORITIES**

2           Dioptics Medical Products, Inc., is the owner of several registered trademarks  
 3 incorporating “Polar” in Trademark International Classification Code 009. On April 19, 2006  
 4 Dioptics filed suit against BEI alleging that BEI’s registered marks and graphics mark application  
 5 infringed Dioptics’s Polar Family of Marks. *See* Complaint, ¶¶14-18. The parties have been in  
 6 settlement negotiations and are close to finalizing a settlement agreement. Dioptics files this  
 7 consent motion for an extension of the deadlines listed in the below chart.

8           BEI consents to this motion. Lee Decl., ¶¶ 3 and 6, Ex. A. The parties have not filed a  
 9 joint stipulation because BEI’s counsel, Mr. Benjamin B. Reed, is not admitted to practice law in  
 10 the State of California and is not admitted *Pro Hac Vice* in this proceeding.

<b>Date</b>	<b>Proposed Date</b>	<b>Event</b>
10/20/2006	12/1/2006	<ul style="list-style-type: none"> <li>○ Last day for Defendant BEI to answer Plaintiff Dioptics’s complaint</li> </ul>
10/20/2006	12/1/2006	<p>Last day to:</p> <ul style="list-style-type: none"> <li>○ meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan</li> <li>○ file ADR Certification Signed by Parties and Counsel</li> <li>○ file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference</li> </ul>

17           Accordingly, Dioptics’s requests that at the Court’s earliest convenience the Court grants  
 18 Dioptics’s motion to extend the due dates as indicated in the chart above, without the need for oral  
 19 argument since BEI consents to this motion.

21 DATED: October 20, 2006

Respectfully submitted,

22           McDERMOTT WILL & EMERY LLP

24           By /s/ John A. Lee  
 25           David S. Bloch  
 25           John A. Lee

26           Attorneys for Plaintiff  
 27           DIOPTICS MEDICAL PRODUCTS, INC.

**[PROPOSED] ORDER**

Good cause appearing therefore, it is hereby ORDERED that all dates and deadlines are extended as indicated in the chart below.

New Date	Event
12/1/2006	<ul style="list-style-type: none"> <li><input type="radio"/> Last day for Defendant BEI to answer Plaintiff Dioptics's complaint</li> </ul>
12/1/2006	Last day to: <ul style="list-style-type: none"> <li><input type="radio"/> meet and confer re: initial disclosures, early settlement, ADR process selection, and discovery plan</li> <li><input type="radio"/> file ADR Certification Signed by Parties and Counsel</li> <li><input type="radio"/> file either Stipulation to ADR Process or Notice of Need for ADR Phone Conference</li> </ul>

IT IS SO ORDERED.

DATED: October 23, 2006



Honorable Maxine M. Chesney, Judge  
United States District Court

MPK 116860-1.070302.0028